[Cite as *In re R.B.*, 2011-Ohio-5042.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

In the matter of: R.B., III

Court of Appeals Nos. H-10-018
H-10-019

Trial Court Nos. JUV 2010 00248
JUV 2010 00249

DECISION AND JUDGMENT

Decided: September 30, 2011

* * * * *

George C. Ford, Huron County Public Defender, and James Joel Sitterly, Assistant Public Defender, for appellant.

Russell Leffler, Huron County Prosecuting Attorney, and Dina Shenker, Assistant Prosecuting Attorney, for appellee.

* * * * *

SINGER, J.

{¶ 1} This appeal comes to us from a judgment issued by the Huron County Court of Common Pleas, Juvenile Division, in a delinquency case. Because we conclude that the trial court did not err in its disposition of the juvenile, we affirm.

{¶ 2} On June 28, 2010, appellant, R.B. III, was charged in the Huron County Court of Common Pleas, Juvenile Division, with two counts of delinquency on the basis that he violated R.C. 2152.02(F), domestic violence, felonies of the fourth degree. On July 20, 2010, an adjudicatory hearing was held. At the hearing, the court took judicial notice of appellant's prior adjudication for a domestic violence charge in Stark County, Ohio. Following the hearing, appellant was adjudicated to be a delinquent child on two counts of domestic violence. At the dispositional hearing, appellant was ordered to serve 180 days in detention. The sentence was suspended on the condition that appellant comply with the conditions of his community control as detailed by the court. Appellant now appeals setting forth the following assignments of error:

{¶ 3} "I. The state failed to meet its constitutional burden of proof beyond a reasonable doubt on the juvenile complaints of felony domestic violence when the state did not produce sufficient evidence to adjudicate child/appellant.

{¶ 4} "II. The trial court abused its discretion by accepting testimony in place of the judgment entry the state was required to produce.

{¶ 5} "III. The trial court erred by taking judicial notice of a prior adjudication to prove an element of State's case."

{¶ 6} Appellant's first two assignments of error will be addressed together. In both assignments of error, appellant contends that the state did not sufficiently prove that he had been previously convicted of domestic violence. "This is important because when a prior offense transforms a crime by increasing its degree, the prior offense is an element

of the crime and must be proven by the state beyond a reasonable doubt." *State v. Jarvis* (Dec. 23, 1999), 11th Dist. No. 98-P-0081, citing *State v. Allen* (1987), 29 Ohio St.3d 53, 54.

{¶ 7} In this case, appellant was charged with domestic violence which would normally be a misdemeanor of the first degree. Because the complaints alleged a prior offense, appellant was charged with fourth degree felonies pursuant to R.C. 2919.25(D)(3), which increases the charge to a felony of the fourth degree for a second offense. Thus, the existence of appellant's prior offense is an element of the crimes.

{¶ 8} Appellant contends that the evidence was insufficient because the state relied on testimony rather than a certified copy of his prior conviction to prove appellant's prior domestic violence offense.

{¶ 9} R.C. 2945.75(B)(1) states:

{¶ 10} "[W]henever in any case it is necessary to prove a prior conviction, a certified copy of the entry of judgment in such prior conviction together with evidence sufficient to identify the defendant named in the entry as the offender in the case at bar, is sufficient to prove such prior conviction." However, a certified copy of a judgment entry of a prior conviction offered pursuant to R.C. 2945.75 is not the exclusive method of proving a prior conviction. *State v. Chaney* (1998), 128 Ohio App.3d 100, 105, *State v. Cyphers* (Apr. 10, 1998), 2d Dist. No. 97-CA-19. "R.C. 2945.75 sanctions merely one means of proving a prior conviction but not the only [means]." *State v. Frambach* (1992), 81 Ohio App.3d 834, 843. In those situations where a certified copy of a judgment entry

of conviction is not introduced, courts have concluded that prior convictions may also be proven through the testimony of a witness who has both knowledge of the prior convictions, and who also can identify the accused as the offender involved in them. *State v. McCoy* (1993), 89 Ohio App.3d 479.

{¶ 11} With regards to appellant's prior adjudication for domestic violence, appellant's father testified at the adjudicatory hearing that appellant pushed him to the ground during an argument at appellant's grandmother's house in Stark County, Ohio. Appellant's mother testified that she was also present when appellant pushed his father down at his grandmother's house. Appellant's mother testified that the incident occurred on May 23, 2009, and that appellant kicked his grandmother and attempted to choke his brother. Appellant's mother also testified that appellant admitted to the domestic violence charge in open court.

{¶ 12} Kathleen Fox testified that she is a Huron County Juvenile Court probation officer. In July 2009, appellant was one of her clients. He became one of her clients after he was adjudicated delinquent for domestic violence in Stark County on June 1, 2009, and his case was transferred to his home county of Huron. Fox testified that she had a certified copy of the order from Stark County that transferred appellant's case to Huron County.

{¶ 13} Based on the foregoing, we conclude that the state sufficiently proved, through the testimony of witnesses who can identify appellant and have knowledge of the

prior incident, the existence of appellant's prior adjudication for domestic violence. Appellant's first and second assignments of error are found not well-taken.

{¶ 14} In his third assignment of error, appellant correctly asserts that the court erred in taking judicial notice of his prior adjudication for domestic violence.

{¶ 15} "A trial court may not take judicial notice of prior proceedings in the court, but may only take judicial notice of prior proceedings in the immediate case." *In re Carlos O.* (July 29, 1994), 6th Dist. No. 94WD013; *Diversified Mtge. Investors, Inc. v. Athens Cty. Bd. of Revision* (1982), 7 Ohio App.3d 157. See, also, *State v. Gauntt* (Mar. 12, 1998), 8th Dist. No. 63792. For purposes of penalty enhancement, prior offenses are the subject of evidence. Id. Accordingly, the court erred in taking judicial notice of appellant's prior conviction. The court's error, however, amounts to harmless error in that the state sufficiently proved the existence of appellant's prior conviction. Appellant's third assignment of error is not well-taken.

{¶ 16} The judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE